

Chapter 4

Resolving Problems with Medical Care and Medical Reports

➔ *For tips on how to “Keep Your Claim on Track,” see page 17. See also Chapter 9, “For More Information and Help.”*

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I don't agree with a medical report written by my primary treating physician or other treating doctor. What can I do?

If you have questions about a particular report, ask your primary treating physician or the other doctor. Sometimes different doctors have different opinions about the cause of an injury, the treatment that is needed, the type of work that you can do while recovering, or other questions. You have a right to challenge a medical report.

What can I do if I don't agree with the doctor about necessary treatment?

If you don't agree about necessary treatment, you have a right to get another doctor's opinion. The steps to take to get another opinion depend on whether you are receiving care within a medical provider network (MPN), a health care organization (HCO), or neither.

Note: You use the steps described below only to challenge an opinion about the kinds of medical tests or treatment you need. If you want to challenge another type of opinion in a medical report, such as an opinion about the causes of your injury or the kinds of work you can do, see pages 32 and 29.

Steps to take if I you are being treated in an MPN

If you are receiving care within an MPN and wish to challenge the treatment prescribed by a doctor who is treating you, first consider switching to another doctor within the MPN. Your employer or the insurer must give you written information on how to change doctors within the MPN. See if you can reach agreement with the new doctor.

If you cannot reach agreement with the new doctor, you can obtain opinions from up to two more doctors within the MPN. These are called second and third opinions. Your employer or the insurer must give you written information on how to do this. You must make appointments to see these doctors within 60 days after you receive a list of available doctors from the claims administrator. If you don't make the appointments within 60 days, you risk losing the right to get the other doctors' opinions.

If you do not agree with the second and third doctors, you can obtain an independent medical review arranged by the state Division of Workers' Compensation (DWC). If that doctor agrees with you about necessary treatment, you may obtain the treatment from a physician outside the MPN.

Steps to take if you are being treated in an HCO

If you are receiving care within an HCO and wish to challenge the treatment prescribed by a doctor who is treating you, first consider switching to another doctor within the HCO. The HCO must give you a choice of physicians within 5 days after you request a change. See if you can reach agreement with the new doctor.

If you cannot reach agreement with the new doctor, you can obtain an opinion from another doctor within the HCO. If you do not agree with this doctor, you can ask the HCO to resolve the dispute. The HCO must use an "expedited grievance procedure" to issue a written decision within 30 days, or sooner if your condition requires a faster decision.

Steps to take if you are not being treated in an MPN or HCO

If you are *not* receiving care within an MPN or HCO and wish to challenge the treatment prescribed by a doctor who is treating you, first consider switching to another doctor (see pages 23-25).

If you cannot switch or cannot reach agreement with the new doctor, you can take the steps below.

1. Send a letter to the claims administrator stating that you disagree with the medical report.

- If you do *not* have an attorney, you must send the letter within 30 days after you receive the report.
- If you have an attorney, your attorney must send the letter within 20 days after receiving the report.

If the letter is not sent before the applicable deadline, you risk losing the right to challenge the treating doctor's opinion.

2. Get a medical opinion, or evaluation, from another doctor.

For instructions on how to do this, see the next page.

HOW TO GET A MEDICAL EVALUTION

If you do not have an attorney:

- After receiving your letter stating that you disagree with a medical report, the claims administrator must send you instructions on how to contact the state Division of Workers' Compensation (DWC) to select a qualified medical evaluator (QME). QMEs are doctors who are certified by the DWC to conduct medical evaluations in workers' compensation cases.
- Within 10 days after the claims administrator sends you the instructions, you must select the medical specialty of the QME and request from the DWC a panel (list) of three QMEs. Within 10 days after the DWC sends you a panel, you must choose a QME from the panel, make an appointment to be examined by the QME, and tell the employer of your choice and appointment time. If you do not meet these deadlines, the claims administrator will choose the doctor you must see.

If you have an attorney:

- Your attorney and the claims administrator may agree on a doctor called an agreed medical evaluator (AME). AMEs are not required to be certified by the DWC.
- If you were injured in 2005 or later and agreement on a doctor cannot be reached, your attorney or the claims administrator may request from the DWC a panel (list) of three QMEs. Your attorney and the claims administrator may agree on someone from this panel. If agreement still cannot be reached, your attorney and the claims administrator may each strike one name from the panel, and the remaining QME will conduct the evaluation.
- If you were injured before 2005 and agreement on a doctor cannot be reached, your attorney will select a QME.

Important! The QME or AME will examine you and write a report describing your condition and addressing the dispute. This is called a "medical-legal report." You or your attorney should select the appropriate medical specialty and choose the QME or AME carefully. The medical-legal report will affect your benefits. In many cases, you will not be able to choose another QME or AME. For help, use the resources in Chapter 9.

For more information about medical evaluations, call the DWC's Medical Unit at 1-800-794-6900, or visit their website: www.dwc.ca.gov (link to Medical Unit).

I agree with a treating doctor about necessary treatment. How long can the claims administrator take to decide whether to authorize treatment?

This depends on whether your medical condition is considered urgent. Claims administrators must decide whether to authorize and pay for treatment within time frames that are part of the utilization review (UR) process described below.

Decisions based on utilization review (UR)

In the utilization review process, the claims administrator may approve treatment. However, he or she is not permitted to change or deny treatment. Only a physician who is qualified to evaluate the recommended treatment may do this. This person is called a "physician reviewer." If a physician reviewer changes or denies treatment, the claims administrator will communicate the decision to you and your treating physician.

- **If your medical situation is considered urgent:** This means you face a serious threat to your health, or the normal time frame for a decision could harm your ability to recover fully. If this is the case, the decision to authorize treatment must be made in a timely fashion not to exceed 72 hours after the claims administrator receives the information needed to make the decision. The claims administrator must communicate the decision within 24 hours.
- **If your medical situation is *not* considered urgent:** The decision to authorize treatment must be made in a timely fashion not to exceed 5 working days after the claims administrator receives the physician's request for authorization along with the information needed to make the decision. If the claims administrator needs more time to obtain necessary information, the decision can be made up to 14 days after receiving the physician's request. The claims administrator must communicate the decision within 24 hours.

What you can do to speed up the decision-making process

Sometimes treatment is delayed because the claims administrator has not received all of the information needed from a treating physician. Other times, the claims administrator does not send all of the information to the physician reviewer. To help avoid delay:

- Encourage the treating physician to respond promptly to questions and requests from the claims administrator about your medical condition and why you need the recommended treatment. Also encourage the doctor to identify, if possible, any scientifically based medical treatment guidelines that support the recommended treatment. If treatment does not follow the MTUS or other scientifically based guidelines, the treating physician must show why the treatment is needed.

- Encourage the claims administrator to promptly send all of the information to the physician reviewer.

Can treatment recommended by a treating doctor be denied?

Yes. A physician reviewer may deny treatment if there is no scientific basis for the treatment. The claims administrator must clearly explain the physician reviewer's reasons for denying treatment.

I don't agree with a decision to deny treatment. What can I do?

To challenge a decision to deny treatment recommended by a treating physician, you can take the steps below.

Steps to challenge a decision to deny treatment

- **If your date of injury is on or after January 1, 2013, or the claims administrator communicated the decision on or after July 1, 2013:**

Request independent medical review (IMR) using the IMR request form that the claims administrator must include with any decision to deny treatment. You may designate another person to request IMR on your behalf, and your treating physician may join with or assist you in requesting IMR. For more information, call the DWC's Medical Unit at 1-800-794-6900, or visit their website: www.dwc.ca.gov (link to Medical Unit).

- **If your date of injury is before January 1, 2013, and the claims administrator communicated the decision before July 1, 2013:**

First, send a letter to the claims administrator stating that you disagree with the decision. You must do this within 20 days after you received the decision from the claims administrator. If you or your attorney do not send the letter within 20 days, you risk losing the right to challenge the decision.

Next, get a medical opinion, or evaluation, from another doctor. For instructions on how to do this, see page 29. After the other doctor issues a medical-legal report addressing the dispute, request an expedited hearing before a workers' compensation judge. For help in requesting a hearing, use the resources described in the Chapter 9.

Penalties for treatment being delayed or denied

If the claims administrator delays or denies treatment without any reasonable excuse, you could be awarded a penalty payment of up to 25% of the value of each service that was unreasonably delayed or denied, up to \$10,000. For help in requesting penalty payments, contact a state Information & Assistance (I&A) officer or an attorney (see Chapter 9).

How to file a complaint about treatment being delayed or denied

The Audit Unit of the state Division of Workers' Compensation (DWC) investigates complaints and imposes penalties if a claims administrator misses utilization review (UR) deadlines in deciding whether to authorize and pay for treatment. The Audit Unit also imposes large monetary penalties when a claims administrator unreasonably delays or denies medical care and other benefits "with a frequency that indicates a general business practice." Audit penalties are paid to the state, not to the injured worker. For instructions on how to file a complaint with the Audit Unit, contact an I&A officer (see Chapter 9).

What can I do if I don't agree with a treating doctor on matters other than treatment?

If you wish to challenge opinions in a medical report other than those about treatment, first consider switching to another doctor. If you cannot switch or cannot reach agreement with the new doctor, you can take the steps below.

1. Send a letter to the claims administrator stating that you disagree with the medical report.

- If you do *not* have an attorney, in some cases you must send the letter within 30 days after you received the report.
- If you have an attorney, in some cases your attorney must send the letter within 20 days after receiving the report.

If the letter is not sent before the applicable deadline, you risk losing the right to challenge the treating doctor's opinion.

2. Get a medical opinion, or evaluation, from another doctor.

For instructions on how to do this, see page 29.

If the claims administrator doesn't agree with a treating doctor on matters other than treatment, what can the claims administrator do?

The claims administrator can require you to be examined by a QME or AME. Here is how the QME or AME would be selected:

- If you do *not* have an attorney:**

The claims administrator can require you to be examined by a QME. The claims administrator must send you instructions on how to contact the DWC and must let *you* select the QME. After the claims administrator sends you these instructions, make sure to take the steps and meet the deadlines described on page 29.

- If you have an attorney:**

Your attorney and the claims administrator may agree on an AME to examine you. If agreement cannot be reached, the claims administrator will select a QME.